



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 10, 2017

Ms. Kayla Landeros
City Attorney
Legal Department
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2017-00683

Dear Ms. Landeros:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 640924.

The City of Temple (the "city") received seven requests from different requestors for information related to a specified motor vehicle accident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1085 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the first requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted information includes city police officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office

Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestors do not give the requisite information under section 1701.661(a). As the requestors do not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

Next, we note the submitted information includes a CR-3 accident report. Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator’s accident report), .062 (officer’s accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, some of the requestors may be the authorized representatives of an individual involved in the accident which is the subject of the request. Accordingly, although the city asserts section 552.108 to withhold the information, a statutory right of access prevails over the Act’s general exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right

of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because section 552.108 is a general exception under the Act, the requestor's statutory access under section 550.065(c) prevails and the city may not withhold the information under section 552.108 of the Government Code. Thus, to the extent the requestors are the authorized representatives of an individual involved in the accident, the city must release the accident report to the requestors pursuant to section 550.065(c).

To the extent the requestors are not authorized representatives of an individual involved in the accident, then the requestors are not persons listed under section 550.065(c), the submitted accident report is confidential under section 550.065(b), and the city must withhold it under section 552.101 of the Government Code. However, section 550.065(c-1) requires the city to create a redacted accident report that may be requested by any person. Trans. Code § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, if the requestors are not persons listed under section 550.065(c), the requestors have a right of access to the redacted accident report. As noted above, although the city asserts section 552.108 to withhold the information, a statutory right of access prevails over the Act's general exceptions to public disclosure, and the city may not withhold the information under section 552.108. *See, e.g.*, ORDs 613 at 4, 451. Thus, if the requestors are not persons listed under section 550.065(c), the city must release the redacted accident report to the requestors pursuant to section 550.065(c-1).

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The city states a portion of the remaining information at issue relates to a pending criminal investigation. Based on the city’s representation and our review, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may

withhold the information you have indicated under section 552.108(a)(1) of the Government Code.²

Section 552.101 of the Government Code also encompasses information made confidential by section 181.006 of the Health and Safety Code, which provides the following:

[F]or a covered entity that is a governmental unit, an individual's protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2)(A) defines "covered entity" to include any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2)(A). The city does not inform us it is a covered entity for purposes of section 181.006 of the Health and Safety Code. Therefore, we find the city has failed to demonstrate Exhibit C is subject to section 181.006 of the Health and Safety Code, and thus, the city may not withhold any of the information at issue under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides, in part:

(a) A communication between certified emergency medical services [{"EMS"}] personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services

²As our ruling is dispositive to the information at issue, we need not address the remaining arguments against disclosure.

to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Id. § 773.091(a)-(b), (g). Exhibit C consists of records made and maintained by EMS personnel. Upon review, we find section 773.091 is applicable to the information at issue. Thus, with the exception of the information subject to section 773.091(g), which is not confidential and must be released, the city must withhold the information in Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

In summary, as the requestors did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. If the requestor is the authorized representative of an individual involved in the accident, then the city must release the CR-3 accident report pursuant to section 550.065(c) of the Transportation Code. If the requestor is not the authorized representative of an individual involved in the accident, then the accident report must be withheld under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; however, the city must release a redacted accident report to the requestor pursuant to section 550.065(c-1) of the Transportation Code. With the exception of basic information, which must be released, the city may withhold the information you have indicated under section 552.108(a)(1) of the Government Code. With the exception of the information subject to section 773.091(g), which is not confidential and must be released, the city must withhold the information in Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Erin Groff". The signature is written in black ink and is positioned above the typed name.

Erin Groff
Assistant Attorney General
Open Records Division

EMG/som

Ref: ID# 640924

Enc. Submitted documents

c: 7 Requestors
(w/o enclosures)